WONG CHEE FONG & 7 ORS.

v.

PUBLIC PROSECUTOR

HIGH COURT MALAYA, JOHOR BAHRU
DATO' HJ. ABDUL MALIK BIN HJ. ISHAK J.
[CRIMINAL APPEAL NO. 41-15-1994]
15 OCTOBER 1994

CRIMINAL LAW: Gaming - Common Gaming Houses Act, 1953 - Police raid on premises - "Pasar malam" game - Charge under s. 6(1) Common Gaming Houses Act, 1953 - Forfeiture of RM6,985 monies found in pockets of appellants - Search list - Whether monies found in pockets of appellants were used or intended to be used for the game of "pasar malam" - Order of forfeiture - Whether forfieture was justified - Section 16(2) of said Act.

In this case, a police party armed with a search warrant raided premises No. 15, Jalan Keranji, Taman Melodies, Johor on 17 January 1994 at 10.45 p.m. A number of gaming implements such as a piece of paper with the figures 1, 2, 3 and 4 were found on the table, three piece of dice, a small saucer and a small bowl were found on the cement floor and all these were seized. As a result of the raid, nine person were arrested and subsequently, they were charged under s. 6(1) of the Common Gaming Houses Act, 1953. All the accused persons pleaded guilty and were convicted under s. 6(1) of the said Act. Eight of them who pleaded guilty on the same day were each fined a sum of RM500 in default one months' imprisonment and the other accused who was dealt with on another day was fined RM700 in default two months' impresonment. Eight of the appellants filed an appeal to the High Court against the order of forfeiture of the monies found in their pockets.

Held:
The order of forfeiture of the monies found in the pockets of the appellents by the learned Magistrate was confirmed as the law was correctly applied to the facts of the case.

[Appeal dismissed]

Cases referred to:
Hoo Kung Hock v. Public Prosecutor [1941] 10 MLJ (F.M.S.R.) 26 ***(dist)***
Teoh Ah Pow v. Public Prosecutor [1961] 27 MLJ 81 ***(dist)***
Tan Ah Bah & 32 Ors v, Public Prosecutor [1983] 2 MLJ 411 ***(dist)***

Legislation referred to:
Common Gaming Houses Act 1953, ss. 6(1), 2(1) (a), 16(1), 16(2).

For the appellants - Terlok Singh; M/s. C.F Wong & Co.
For the respondent - Azman bin Abdullah, DPP

JUDGMENT

Hj. Abdul Malik bin Hj. Ishak J:
On 17 January 1994 at 10.45 p.m. armed with a search warrant Inspector Sulaiman Ahmad ("Sulaiman") led a police party and raided premises No. 15, Jalan Keranji, Taman Melodies, Johor Bahru. Initially, the front door of the premises was bolted from inside and Sulaiman had to shout to the occupants inside to enable the police

to gain entry. The door was eventually opened by Wong Chee Fong, one of the appellants in this appeal. Sulaiman introduced his office and proceeded inside the premises and it was at that juncture that he saw a number of male Chinese running helter-skelter from the rear portion of the room in the building. Sulaiman in an authoritative voice ordered them to remain in the said room. They complied. A number of gaming implements such as a piece of paper with the figures 1, 2, 3 and 4 was found on the table, three pieces of dice, a small saucer and a small bowl were found on the cement floor and all these were seized. Incidentally, these appliances showed that the game of "pasar malam" was in progress before the police arrived.

Nine persons were arrested and, subsequently, they were charged under s. 6(1) of the Common Gaming Houses Act, 1953 (Act 289) ("Act"). Eight of them pleaded guilty on the same day and having been convicted under s. 6(1) of the Act they were each fined a sum of RM500 in default one months' imprisonment. The remaining accused person was dealt with on another day and he was fined, upon pleading guilty, to a sum of RM700 in default two months' imprisonment. Only eight appellants filed an appeal voicing their grievances at the forfeiture of the monies found in their pockets (see the search lists).

It is not disputed, before me, by both parties that the premises in question fail squarely within the meaning of common gaming house in s. 2(1) (a) of the Act and that section reads as follows:

> 2(1) In this Act, unless the context otherwise requires -
>
> "Common gaming house" includes -
>
> (a) any place kept or used for gaming to which the public or any class of the public has or may have access.

It is also not disputed that the police were armed with a search warrant at the time of the raid and this means only one thing: that the raid was conducted in compliance with s. 16(1) of the Act and, consequently, as the learned Magistrate had ordered forfeiture of the monies found in the pockets of the appellants to the tune RM6,985, it must have been made within the meaning of s. 16(2) of the Act.

Concerted attempts were made to impress upon me that there were cases wherein the High Courts have in the past refused to uphold the orders of forfeiture of monies found in the pockets of the appellants. Thus, in *Hoo Kung Hock v. Public Prosecutor* [1941] 10 MLJ (F.M.S.R) 26, Cussen J. ruled that the Magistrate was not justified in making the order of confiscation, as there was no evidence that the money seized by the police was used for the commission of the offence of gaming. Briefly, the facts in Hoo Kung Hock's case were that seventeen persons were arrested when the police raided a Chinese club at No:1, Cross Lane, Kuala Lumpur. Apart from the seizure of several gaming implements, the police also searched these seventeen persons and from their persons various sums totalling RM198.08 was taken. In a short judgment Cussen J. had this to say:

> In my opinion, the evidence does not establish that whatever sums of money theseaccused had in their possession, in their pockets, must have been used for the commission of the offence of gaming. If anything, the inference appears to me to be at least as strong against that conclusion.

In *Teoh Ah Pow v. Public Prosecutor* [1961] 27 MLJ 81, the police raided a waste piece of land at Kampong Permatang Rawa where there was an open unwalled shed. Inside that shed there were some 15 to 20 persons congregated therein. As the police approached the shed someone shouted: "Mata Lai", and the occupants of the shed fled for their lives. The appellant was one of those who ran and he was caught by the police and upon a search being conducted on him, the police found RM170 in his pocket and another RM107 in his purse. In his defence, the appellant testified that the money in his pocket belonged to a friend, while the money in his purse was his own money and the appellant further testified that he had gone to the place to look for a friend and before he reached the shed he saw the police and he also saw everyone running away and he too decided to run and it was while he was running that he was arrested. Rigby J delivered a short judgment where he said that:

> It is quite clear that the learned Magistrate had no power to make the order for forfeiture under s. 16(2). That section is restricted to the confiscation of gaming instruments, appliances, money, etc, found in a common gaming house" or on any persons found therein or escaping therefrom and which the Magistrate is of opinion were used or intended to be used for any game or lottery ..." It is only in relation to common gaming houses and where a search warrant has been issued in accordance with the provisions of s. 16(1) of the Ordinance that the Magistrate is entitled to exercise his powers of forfeiture under s. 16(2).

In *Tan Ah Bah and 32 Ors. v. Public Prosecutor* [1983] 2 MLJ 411, Gunn Chit Tuan J followed the decisions of *Hoo Kung Hock* & *Teoh Ah Pow* and held that:

> The evidence that the said sum of RM8,850 found in the prossession, i.e. in the pockets, of those 33 persons did not establish that that sum of money was used for the commission of the offence of gaming under s. 7(2) of the said that Ordinance. It was also clear that the learned Magistrate had no power to make an order for the forfeiture of the said sum of RM8,850 under s. 16(2) of the said Ordinance as that section is restricted to the confiscation of gaming instruments, appliances, money, etc, found in a common gaming house "or on any persons found therein or escaping therefrom and which the Magistrate is of opinion were used or intended to be used for any game or lottery ..."

These cases are poles apart from the present appeal and they can easily be distinguished. Three things stood prominently to the forefront in regard to the present appeal. Firstly, the building was a common gaming house within the meaning of s. 6(1) and s. 2(1) (a) of the Act. Secondly, the raid was conducted with a search warrant. Thirdly, the learned Magistrate made a specific finding of fact and was of the opinion that the gaming implements together with that sum of money were used or intended to be used for the game of "pasar malam". This was what the learned Magistrate said:

> ...serta apabila Mahkamah mendapati bahawa barang-barang kes tersebut termasuk wang tunai yang dirampas digunakan atau bertujuan untuk digunakan di dalam permainan judi di rumah perjudian awam itu maka wang tunai yang berjumlah RM6,985 (P6) tersebur harus dilucutkan iaitu secara dimasukkan pada hasil kerajaan.

For the foregoimg reasons, I comfirmed the O. of forfeiture of the monies found in the pockets of the appelants as I felt that the learned Magistrate had correctly applied the facts of the case to the law.